SUPREME COURT, U. S.

No. 763

FILED
DEC 27 1968
JOHN F. DAVIS, CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, A.D. 1968

BERNHARD ROSEE,

Petitioner,

vs.

BOARD OF TRADE OF THE CITY OF CHICAGO, an Illinois corporation; JAMES E. BAGGOT, JR., and DONALD W. MORRISON, individually and d/b/a BAGGOT & MORRISON; HARRIS HAYWOOD; SIDNEY C. HAMPER, MARTIN H. MILEK, ROY C. LOFTUS, RICHARD ROSE, RAYMOND COMENZO, and THOMAS HERR, individually and as members of the Committee of Arbitration of the Board of Trade of the City of Chicago; JULIUS MAYER; WILBERT E. HUGE; ROBERT L. DAVID; THOMAS E. HOSTY; ROBERT C. LIEBENOW, individually and as President of the Board of Trade of the City of Chicago; WARREN W. LEBECK, individually and as Secretary of the Board of Trade of the City of Chicago; JAMES J. COUGHLIN; ALBERT W. KIBBY; and SAM GORDON,

Respondents.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Seventh Circuit

REPLY FOR PETITIONER

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Because respondents persist, just as they did in the Court of Appeals, in making misleading statements, peti-

tioner is compelled to transmit to this court an additional appendix consisting of two letters addressed to the Solicitor General of the United States dated December 5, 1968, and December 7, 1968, respectively. These letters spell out abuses by attorneys for the government in the United States Court of Appeals, 7th Circuit (Appendix, pages 1, 7).

On page 2 of their brief respondents state that petitioner "did not directly buy and sell himself on the Board of Trade." This statement is patently false and the records would show that petitioner himself bought and sold on his own account on the floor of the Board of Trade. He is now deprived of these rights.

Respondents' reference to prior suits filed by petitioner, in the footnote on page 2 of their brief, is misleading because the case at bar is based on a conspiracy and involves defendants not named in the former action.

Respondents, at page 6, footnote 3, fail to state that petitioner's motion under Rule 60(b), F. R. Civ. P., was filed to set aside not only the summary judgment, but also the order of remand because the decision was based on fraud. See Ct. of Appeals App. 131-155.

No serious consideration should be given respondents' reference to arbitration proceedings because petitioner as a member of the Board of Trade was denied rights enjoyed by any other member. See petitioner's complaint, Ct. of Appeals App. 1-16.

The Court of Appeals gravely erred in refusing to review an order of the District Court which decided that a whole

mass of documentary evidence withheld from petitioner was privileged. Such order appears in the record as follows:

2-16-65 Docket, United States District Court for the Northern District of Illinois, No. 63C 1348

2/16/65 Filed Opinion.

Pursuant to opinion this day filed Court orders the production pursuant to the subpoena duces tecum served by the plaintiff, Bernhard Rosee, on Roger E. Harper and filed with the Clerk of this Court on May 21, 1964, certain documents as specified in draft order. Court refuses to order production of the documents, as specified in draft, on the ground that they are privileged or irrelevant and vacates its order of August 24, 1964 denying the motion of Roger E. Harper to quash the aforementioned subpoena with respect to said documents.—Draft—Will, J.

Petitioner had duly sought such records by a proper subpoena (Supp. App. Ct. of Appeals 9-12). An additional point for decision, therefore, is whether such relevant records are immune from discovery.

This case is replete with technical decisions touching upon jurisdiction, even discovery, which never permitted a full trial on the merits and which never even gave to petitioner full access to available evidence. Petitioner is entitled to his day in court which has to date been denied him.

The contention, on page 7 of respondents' brief, that certain non-government defendants are not now before this court is incorrect because the conspiracy which is the gravamen of the complaint is inseparable and interwoven as to *all* parties defendant.

Respondents (page 9 of their brief) state: "The immunity is not destroyed because of the allegations that in performing their duties the government officials acted pursuant to a conspiracy with outsiders." Defendant Board of Trade and others cannot be considered as "outsiders" because they are under the jurisdiction and supervision of the Commodity Exchange Authority and must submit daily reports of all transactions from coast to coast in the United States as well as those from foreign countries, if any, as required by the C. E. A.

Furthermore, the acts of conspiracy by Kibby and Gordon were done under *Color of office.* See Removal Order, App. of this Reply p. 9. None of the cases cited by respondent deals with a conspiracy under color of office involving violations of the C. E. A.

It is imperative that this case be reviewed by this court because dealings in the Board of Trade vitally affects the public interest.

WHEREFORE, Your Petitioner prays that this Honorable Court grant this Petition and issue a Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit.

Respectfully submitted,

BERNHARD ROSEE
Petitioner, Pro se